

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

JAMES PRESTON WATKINS,

Movant,

v.

Civil Action No. 1:16-05660
Criminal No. 1:00-00160-02

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION AND ORDER

By Standing Order, this action was referred to United States Magistrate Judge Dwane L. Tinsley for submission of findings and recommendation regarding disposition pursuant to 28 U.S.C. § 636(b) (1) (B). Magistrate Judge Tinsley submitted to the court his Proposed Findings and Recommendation ("PF&R") on September 30, 2020, in which he recommended that the court lift the stay previously imposed, reinstate this matter to the court's active docket, deny defendant's Emergency Motion to Correct Sentence under 28 U.S.C. § 2255, and dismiss this matter civil action from the docket of the court. (ECF No. 101.)

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted fourteen days and three mailing days in which to file objections to Magistrate Judge Tinsley's Proposed Findings and Recommendation. The failure of any party to file such objections within the time allowed constitutes a

wavier of such party's right to a de novo review by this court.

Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989). Neither party filed any objections to the PF&R within the required time period. Accordingly, the court adopts the Findings and Recommendation of Magistrate Judge Tinsley as follows:

1. The stay imposed by previous order of the court (ECF No. 93) is lifted and this matter is reinstated to the court's active docket;
2. Defendant's Emergency Motion to Correct Sentence under 28 U.S.C. § 2255 (ECF No. 68) is **DISMISSED**; and
3. The Clerk is directed to remove this case from the court's active docket.

Additionally, the court has considered whether to grant a certificate of appealability. See 28 U.S.C. § 2253(c). A certificate will not be granted unless there is "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The standard is satisfied only upon a showing that reasonable jurists would find that any assessment of the constitutional claims by this court is debatable or wrong and that any dispositive procedural ruling is likewise debatable.

Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). The court concludes that the governing

standard is not satisfied in this instance. Accordingly, the court **DENIES** a certificate of appealability.

The Clerk is further directed to send a copy of this Memorandum Opinion and Order to counsel of record and any unrepresented parties.

IT IS SO ORDERED this 24th day of August, 2021.

ENTER:

David A. Faber

David A. Faber
Senior United States District Judge